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<b>T.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1736</b>
	)	<b>Issued: April 23, 2021</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	
<b>BUREAU OF PRISONS, FEDERAL</b>	)	
<b>CORRECTIONAL INSTITUTION, Fort Dix, NJ,</b>	)	
<b>Employer</b>	)	
	)	

*Case Submitted on the Record*

## DECISION AND ORDER

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On August 16, 2019 appellant, through counsel, filed a timely appeal from a March 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>3</sup> The Board notes that on October 31, 2019 appellant timely filed an appeal from a July 9, 2019 merit decision, which denied expansion of appellant's claim to include a left knee sprain and left knee quadriceps tear as a consequence of the January 20, 2018 employment injury. That appeal, assigned Docket No. 20-0182, is currently pending before the Board and is being adjudicated separately.

## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish total disability from work for the period June 13 through August 17, 2018 causally related to his accepted January 20, 2018 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 18, 2018, as he no longer had residuals or disability causally related to his accepted January 20, 2018 employment injury; and (3) whether appellant has met his burden of proof to establish continuing residuals or disability causally related to his accepted January 20, 2018 employment injury on or after August 18, 2018.

## **FACTUAL HISTORY**

On January 22, 2018 appellant, then a 45-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2018 he severely strained his lower back as a result of physically restraining an inmate that had attacked him while in the performance of duty. On March 8, 2018 OWCP accepted his claim for lumbar strain and lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls from March 7 to June 12, 2018.

Appellant continued to receive medical treatment. In reports dated March 14 and April 16, 2018, Dr. George W. Young, a Board-certified physical medicine and rehabilitation and pain medicine physician, recounted appellant's continued complaints of low back, right lower extremity radicular, and left knee pain. He provided examination findings and diagnosed lumbar radiculopathy, low back with right lower extremity radicular pain, and left knee pain. Dr. Young opined that appellant's left knee injury was related to his work injury. He indicated that appellant was totally disabled from employment.

On March 21, 2018 appellant began to undergo physical therapy treatment and submitted treatment notes.

In an April 10, 2018 telephone memorandum (Form CA-110), appellant informed OWCP's claims examiner that he was sending evidence to support expanding his claim to include a left knee condition.

Appellant submitted an April 16, 2018 letter by Dr. R. Robert Franks, an osteopathic physician specializing in family medicine, who indicated that he was treating appellant for anterior knee pain and partial thickness quad tendon tear. Dr. Franks explained that appellant was involved in an altercation at work that "exacerbated his sciatica and caused appellant to fall onto his left knee several times."

In a May 2, 2018 narrative report, Dr. Young recounted that two days after the January 20, 2018 work incident, appellant had an episode of severe low back pain, which caused him to buckle and fall down onto his left knee. He opined that appellant's low back pain from the January 20, 2018 work injury, caused his knees to buckle and his left knee strain and quadriceps tear. Dr. Young also reported that appellant would most likely be at maximum medical improvement (MMI) by his follow-up visit in May and would be able to return to full duty. He completed a work capacity evaluation (Form OWCP-5c), which indicated that appellant could work limited duty with no exposure to the prison population.

In a May 16, 2018 examination report, Dr. Young indicated that he reevaluated appellant for his complaints of continued low back pain. He reported lumbar physical examination findings of mildly antalgic gait and functional range of motion. Dr. Young diagnosed low back pain. He concluded that appellant had reached MMI and could return to full-duty work. Dr. Young noted that he was releasing appellant from his medical care.

On June 26, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability for the period June 13 to 26, 2018. He filed additional Form CA-7 claims for compensation for wage loss due to continuing total disability until August 21, 2018.

In a development letter dated July 16, 2018, OWCP informed appellant that it received his claims for wage-loss compensation for the period June 13 through July 10, 2018. It advised him that the evidence submitted was insufficient to establish his claim and requested that he submit additional evidence to establish that he was unable to work modified duty during the period claimed as a result of his January 20, 2018 employment injury. OWCP afforded appellant 30 days to provide the requested information.

Appellant submitted a January 27, 2018 emergency department record, and January 29, 2018 examination report, which described the treatment that he had received following a motor vehicle accident that occurred on January 24, 2018.

In a July 17, 2018 handwritten statement, appellant provided a timeline of events for January 2018. He reported that on January 20, 2018 he sustained a lumbar sprain at work after an altercation with an inmate. Appellant indicated that he sought medical treatment on January 21, 2018 and that on January 23, 2018 he fell down due to severe low back pain. He reported that on January 24, 2018 he was involved in a motor vehicle accident, which injured his shoulder. Appellant indicated that on January 28, 2018 he fell down again on his left knee.

By decision dated August 17, 2018, OWCP denied expansion of appellant's claim to include the additional conditions of left quadriceps knee tear and left knee strain. It determined that his current left knee injury was a result of the intervening motor vehicle accident, and not the accepted January 20, 2018 employment injury.

By separate decision dated August 17, 2018, OWCP denied appellant's claim for wage-loss compensation for the period June 13 to August 17, 2018. It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period due to his accepted lumbar injury. OWCP noted that Dr. Young had reported that appellant had reached MMI and had released appellant to full-duty work in his May 16, 2018 examination note.

By a third decision dated August 17, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 18, 2018, finding that appellant had no residuals or disability causally related to the January 20, 2018 work injury. It noted that Dr. Young had opined in his May 16, 2018 report that appellant could return to full-duty work, and that he was releasing appellant from his care.

On August 28, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review regarding all three August 17, 2018 decisions. The hearing was held on January 14, 2019.

Appellant submitted additional reports by Dr. Franks dated February 14 to May 15, 2018. Dr. Franks noted that appellant was seen for reevaluation of his left knee and ankle. He provided examination findings regarding appellant's left lower extremity and diagnosed left thigh strain, left quadriceps tendon tear, and left anterior knee pain.

In a June 26, 2018 examination note, Dr. Franks noted left knee examination findings of full range of motion and no medial or lateral joint line tenderness. Lachman's, Steinmann's, and McMurray's tests were negative. Dr. Franks diagnosed left thigh strain, partial thickness tear of the quadriceps tendon, and left thigh strain. He indicated that appellant's strength was good, but that appellant would "need to be better for him to do his job."

In an August 14, 2018 examination note, Dr. Franks indicated that appellant was making progress in physical therapy and no longer had locking, catching, or buckling in his left knee. Upon physical examination of appellant's left knee, he observed crepitus with grind and inhibition. Range of motion was full and muscle strength was 5/5. Dr. Franks diagnosed left thigh strain and partial thickness tear of the left quadriceps tendon. He reported that he hoped appellant would be back at work by the end of the month.

In a September 24, 2018 work status note, Dr. Franks indicated that appellant could work light duty.

OWCP also received a January 24, 2019 addendum report from Dr. Young. He noted that he reviewed additional medical records dated from January 21 to January 29, 2018, and pointed out that appellant did not complain of left knee pain until January 29, 2018. Dr. Young explained that there was still no "clear causality" that appellant's knee pain was related to the motor vehicle accident, since he was not complaining of knee pain when he first visited the emergency room after the accident. He noted that appellant did not report his left knee pain to his medical provider until after his low back pain caused his knee to buckle at work. Dr. Young opined that the left knee pain secondary to his quadriceps injury was related to his work injury.

By decision dated March 20, 2019, OWCP's hearing representative affirmed the August 17, 2018 decision terminating appellant's wage-loss compensation and medical benefits. She found that Dr. Young's May 16, 2018 report clearly established that appellant's January 20, 2018 back injury had resolved. The hearing representative also affirmed the August 17, 2018 decision denying appellant's wage-loss compensation claim for the period June 13 through August 17, 2018. She noted that Dr. Young had released appellant to full duty work on May 16, 2018 and that there was no medical evidence in the record to establish that appellant was unable to work during the claimed period due to his January 20, 2018 employment injury. Regarding appellant's claim for a consequential left knee condition, the hearing representative determined that further medical development was necessary to determine whether appellant sustained a consequential left knee injury as a result of his January 20, 2018 employment injury. She instructed OWCP to refer the complete medical record, along with an updated SOAF, to DMA Dr. Fellars for clarification on the issue of consequential injury.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>5</sup> The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>6</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>7</sup>

Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>8</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.<sup>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish total disability from work for the period June 13 through August 17, 2018.

During his claimed period of disability, appellant received medical treatment from Dr. Franks. In reports dated February 14 to August 14, 2018, Dr. Franks related that appellant was seen for reevaluation of his left knee and ankle. He provided examination findings and diagnosed left thigh strain, left quadriceps tendon tear, and left anterior knee pain. He reported that appellant would "need to be better for him to do his job." Dr. Franks indicated that he hoped appellant would be back at work by the end of the month. However, he did not provide an opinion on whether appellant was disabled from work due to the January 20, 2018 employment injury.<sup>11</sup> In

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>6</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>7</sup> See *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 5.

<sup>8</sup> *Amelia S. Jefferson*, *id.*; *William A. Archer*, 55 ECAB 674 (2004).

<sup>9</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>10</sup> See *S.G.*, docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

addition, Dr. Franks did not identify the specific dates that appellant was disabled from work.<sup>12</sup> Therefore, these reports are of no probative value on the issue of total disability.

Appellant also submitted a series of reports from Dr. Young dated March 14 to May 16, 2018. In a May 16, 2018 examination note, Dr. Young noted examination findings and diagnosed low back pain. He authorized appellant to return to full duty. The Board finds that Dr. Young's May 16, 2018 note did not establish total disability from work for the period June 13 to August 17, 2018. On the contrary, Dr. Young indicated that appellant was able to return to work in full-duty capacity. The Board has held that medical evidence that negates causal relationship is of no probative value.<sup>13</sup> Thus, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record does not contain sufficient rationale to establish disability during the claimed period, the Board finds that appellant has not met his burden of proof to establish his claim.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.<sup>15</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>16</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>17</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>18</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.<sup>19</sup>

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<sup>12</sup> *Supra* note 10.

<sup>13</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *T.W.*, Docket No. 19-0677 (issued August 16, 2019)..

<sup>14</sup> The Board notes, however, that for a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *see also* *K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).

<sup>15</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>16</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also* *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>17</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>18</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>19</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relationship, not OWCP's burden to disprove such relationship.<sup>20</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 18, 2018, as he no longer had residuals or disability causally related to his accepted January 20, 2018 employment injury.

In an August 17, 2018 decision, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 18, 2018.<sup>21</sup> It based its decision to terminate benefits on the May 16, 2018 report of Dr. Young, appellant's treating physician. Appellant began to receive treatment from Dr. Young on February 14, 2018. He provided examination findings and diagnosed lumbar radiculopathy, low back pain, and left knee pain. Dr. Young indicated that appellant was totally disabled from work until April 1, 2018. In a May 16, 2018 examination report, he reported lumbar physical examination findings of mildly antalgic gait and functional range of motion. Dr. Young concluded that appellant had reached MMI and could return to full-duty work. He released appellant from care.

The Board finds Dr. Young's opinion to be probative evidence that is sufficiently reliable to justify OWCP's termination of appellant's wage-loss compensation and medical benefits for his accepted January 20, 2018 employment injury. Dr. Young reported that appellant had reached MMI for his accepted lumbar injury and released him from care. He also determined that appellant was capable of resuming his full duties. Furthermore, appellant has not submitted medical evidence supporting continuing disability or need for continued medical treatment.<sup>22</sup> Accordingly, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, as he had no ongoing disability or residuals due to his accepted January 20, 2018 employment injury.<sup>23</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

As OWCP properly terminated appellant's medical benefits, the burden shifts to him to establish continuing disability or residuals, after that date, causally related to his accepted injury.<sup>24</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a

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<sup>20</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>21</sup> If compensation has been paid on the daily rolls for less than one year a pre-termination notification is not required. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(a)(3) (February 2013). Since OWCP paid appellant wage-loss compensation on the daily rolls for the period March 7 to June 12, 2018, which was less than one year, a pre-termination notification was not required.

<sup>22</sup> *See Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *C.M.*, Docket No. 13-2178 (issued March 6, 2014).

<sup>23</sup> *See J.J.*, Docket No. 18-1692 (issued July 16, 2019).

<sup>24</sup> *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Manuel Gill*, 52 ECAB 282 (2001).

complete medical and factual background, supporting such a causal relationship.<sup>25</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>26</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that appellant has not met his burden of proof to establish continuing residuals or disability after August 18, 2018 causally related to his accepted January 20, 2018 employment injury.

Following the termination of his medical benefits, effective August 18, 2018, appellant submitted reports dated February 14 to August 14, 2018 by Dr. Franks, who noted his treatment of appellant for left thigh strain, left quadriceps tendon tear, and left anterior knee pain. In an August 14, 2018 examination note, Dr. Franks related that he hoped that appellant could return to work by the end of the month. He did not, however, address the relevant issue of whether appellant had continued residuals of his work-related lumbar injury. This report, therefore, is of diminished probative value and insufficient to establish appellant's entitlement to continued wage-loss compensation and medical benefits.<sup>27</sup>

Likewise, Dr. Young in his January 24, 2019 addendum report, also did not opine on whether appellant still had residuals of his January 20, 2018 lumbar injury. His opinion, therefore, is of limited probative value to establish continuing disability or residuals on or after August 18, 2018.<sup>28</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish total disability from work for the period June 13 through August 17, 2018. The Board also finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 18, 2018, as he no longer had residuals or disability causally related to his accepted January 20, 2018 employment injury. The Board further finds that appellant has not met his burden of proof to establish continuing residuals or disability on or after August 18, 2018 causally related to his accepted January 20, 2018 employment injury.

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<sup>25</sup> *C.L.*, Docket No. 18-1379 (issued February 3, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>26</sup> See *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>27</sup> See *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

<sup>28</sup> *C.B.*, Docket No. 18-0040 (issued May 7, 2019).



**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2019 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board